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Attorneys for Defendants
Toyota Motor Sales USA, Inc., Saatchi & Saatchi
North America, Inc., and Smuggler, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ERIC E. DAHL, an individual,

Plaintiff,

vs.

TOYOTA MOTOR SALES USA, INC.,
A California corporation, SAATCHI &
SAATCHI NORTH AMERICA, INC.,
a Delaware corporation; SMUGGLER, INC.,
a California corporation, DOES 1 through
X; and ROE CORPORATIONS 1 through
X, inclusive,

Defendants.

Case No.: 2:14-cv-01737-JCM-PAL

**DEFENDANTS' ANSWER TO
COMPLAINT OF PLAINTIFF
ERIC E. DAHL**

1 For their answer to Plaintiff's Complaint, Defendant Toyota Motor Sales, U.S.A., Inc.,
 2 Defendant Saatchi & Saatchi North America, Inc. and Defendant Smuggler, Inc., (collectively,
 3 "Defendants") respond as follows:

4 **I. PARTIES AND JURISDICTION**

5 1. That at all times mentioned herein, Plaintiff, ERIC E. DAHL, (hereinafter "Dahl"
 6 or "Plaintiff") was a resident of the State of Nevada or the State of Tennessee.

7 **ANSWER:** Defendants lack knowledge or information sufficient to form a belief as to
 8 the truth of the allegations of Paragraph 1, but state affirmatively that Plaintiff has failed to
 9 allege his citizenship of one state.

10 2. That at all times mentioned herein, Defendant, TOYOTA MOTOR SALES,
 11 U.S.A., INC., (hereinafter "Toyota" or "Defendant") was and is, upon information and belief, a
 12 corporation duly formed and existing under the laws of California with its principal place of
 13 business at 19001 South Western Avenue, Torrance, California 90501.

14 **ANSWER:** Defendant Toyota admits the allegations of Paragraph 2.

15 3. That at all times mentioned herein, Defendant, SAATCHI & SAATCHI NORTH
 16 AMERICA, INC., (hereinafter "Saatchi" or "Defendant") was and is, upon information and
 17 belief, a corporation duly formed and operating pursuant to the laws of Delaware with its
 18 principal place of business at 3501 Sepulveda Blvd., Torrance, California 90505.

19 **ANSWER:** Defendant Saatchi admits the allegations of Paragraph 3.

20 4. That at all times mentioned herein, Defendant, SMUGGLER, INC., (hereinafter
 21 "Smuggler" or "Defendant") was and is a corporation duly formed and operating pursuant to the
 22 laws of California with its principal place of business at 823 Seward Street, Los Angeles,
 23 California 90038.

24 **ANSWER:** Defendant Smuggler admits the allegations of Paragraph 4.

25 5. That the true names and capacities, whether individual, corporate, associate, or
 26 otherwise, of Defendants as herein alleged as DOES 1 through 20, and ROE COMPANIES 1
 27 through 20, are unknown to Plaintiff who therefore sues said Defendants by such fictitious
 28 names. Plaintiff is informed and believes and thereon alleges that each of the Defendants
 designated herein as DOE is responsible in some manner for the events and happenings referred
 to and caused damages proximately to Plaintiff as herein alleged, and Plaintiff will ask leave of
 the Court to amend the Complaint to insert the true names and capacities of DOES 1 through 20,
 ROE COMPANIES 1 through 20, and ROE CORPORATIONS 1 through 20, when the same
 have been ascertained, and join such Defendants in this action.

1 **ANSWER:** Paragraph 5 states a legal conclusion to which no response is required. To
 2 the extent a response is required, Defendants deny the allegations of Paragraph 5.

3 6. This Court has original and subject matter jurisdiction of this action under 28
 4 USC §1338(2) because the action arises under the Copyright Act, 17 USC §§ 101 et seq. and
 5 under 28 USC §1332 as the Plaintiff and Defendants, and each of them, are domiciled in
 6 different states and the amount in controversy exceeds \$75,000.00. The court has personal
 7 jurisdiction over the defendants pursuant to NRS 14.065 as such jurisdiction is not inconsistent
 8 with the United States or Nevada Constitutions. Venue is proper because this action relates to
 and arises out of conduct which occurred, in whole or in part, in the County of Clark, State of
 Nevada.

9 **ANSWER:** Defendants admit that this Court has personal jurisdiction over each of them.
 10 The remainder of Paragraph 6 states legal conclusions to which no responses are required. To
 11 the extent responses are required, Defendants deny the allegations of Paragraph 6.

12 **II. GENERAL ALLEGATIONS**

13 7. In 2013 Plaintiff authored a book titled "B. B. King's Lucille and
 14 the Loves Before Her" (hereinafter, "the Book.")

15 **ANSWER:** Defendants lack knowledge or information sufficient to form a belief as to
 16 the truth of the allegations of Paragraph 7.

17 8. The Book was Copyrighted by Plaintiff Eric E. Dahl under Registration Number
 18 TX 7-912-552 with the United States Copyright Office. A true and correct copy of the U.S.
 19 Copyright registration is attached hereto. Since the effective date of the Copyright registration
 20 Plaintiff has offered the book for sale to the public through various retail outlets.

21 **ANSWER:** Defendants lack knowledge or information sufficient to form a belief as to
 22 the truth of the allegations of Paragraph 8.

23 9. In Chapters 25, 26 and 27 of the Book the Plaintiff tells a very specific story
 24 wherein he discovered and purchased a Gibson Lucille guitar in a pawn shop in Las Vegas in
 25 2009 for \$2,161.99. He further describes his efforts in determining the origin of the guitar.
 26 Ultimately, he established that the Gibson Lucille purchased by Plaintiff was the original
 "Prototype 1" 80th Birthday Gibson Lucille which had been presented to B. B. King on the
 27 occasion of his 80th birthday in 2005. Mr. King had used that guitar in his performances between
 2005 and the summer of 2009 when the guitar was stolen from his home. Plaintiff agreed to
 28 return the guitar to Mr. King without compensation and a meeting was arranged in November of
 2009 where the Plaintiff went to Mr. King's office and presented the recovered guitar to Mr.

1 King personally. In appreciation, Mr. King had arranged to have another Gibson Lucille present
2 which he autographed and gifted to Plaintiff during the meeting.

3 **ANSWER:** Defendants deny that the events recounted in Chapters 25, 26, and 27 of the
4 Book, and repeated in this Paragraph, constitute “a very specific story.” Defendants lack
5 knowledge or information sufficient to form a belief as to the truth of the allegation that the
6 Book recounts an event in Mr. Dahl’s life as described in the allegations of Paragraph 9.

7 Defendants deny each and every other allegation of Paragraph 9.

8
9 10. In 2014 Toyota began broadcasting a certain television advertisement for the 2015
10 Toyota Camry (“the Ad”) as part of its “Bold” campaign. Upon information and belief the Ad
11 was conceived, developed and executed by defendant Saatchi pursuant to an agreement with
12 Toyota. Upon further information and belief the Ad was produced by defendant Smuggler
13 pursuant to an agreement with Saatchi and/or Toyota.

14 **ANSWER:** Defendants admit the allegations of Paragraph 10.

15 11. The Ad, which was created for commercial use, presented an adapted visual
16 interpretation of the story contained in Chapters 25, 26 and 27 of the Book. Specifically, the Ad
17 depicts a young woman who purchases a storage unit and, according to the voice over narration,
18 “found an old guitar” (with “Lucille” written on it), “tracked down the previous owner” (who
19 was B. B. King) “reunited them” and “hit the jackpot” (when she was gifted with an autographed
20 guitar by Mr. King in return).

21 **ANSWER:** Defendants admit that the Ad was created for commercial use. Defendants
22 deny that the Ad “presented an adapted visual interpretation of the story contained in Chapters
23 25, 26 and 27 of the Book.” Defendants admit that the Ad depicts a young woman who
24 purchases a storage unit, and that the Ad’s voice over narration states that she “found an old
25 guitar”, “tracked down the previous owner”, “reunited them”, and “hit the jackpot”. Defendants
26 admit that B.B. King and a guitar with the word “Lucille” written on it both appeared in the Ad.
27 Defendants deny all remaining allegations of Paragraph 11.

28 12. Upon information and belief representatives of Gibson who were aware of the
story of Plaintiff finding and returning B.B. King’s Lucille, and that he had published and
copyrighted the story, worked with defendants in developing the Ad. Those representatives have
communicated to the Plaintiff that the Ad was, in fact, based upon Plaintiff’s story. As a result

1 the defendants had access to the story as related in the Book.

2 **ANSWER:** Defendants deny each and every allegation of Paragraph 12.

3 **III. FIRST CLAIM FOR RELIEF**

4 13. Plaintiff hereby incorporates Paragraphs 1 through 12 of the Complaint as though
5 said paragraphs were fully set forth and incorporates the same herein by reference.

6 **ANSWER:** Defendants repeat and incorporate by reference all of their responses in the
7 above paragraphs as if fully set forth herein.

8 14. That the Ad constitutes a derivative work of the copyrighted work as defined in
9 17 USC §1 01 and was for commercial use.

10 **ANSWER:** Defendants admit that the Ad was created for commercial use, and deny
11 each and every remaining allegation of Paragraph 14.

12 15. That pursuant to 17 USC §106(2), as the author and registered copyright holder of
13 the Book, Plaintiff has the exclusive right to create derivative works from his copyrighted
14 material, including the Book.

15 **ANSWER:** Paragraph 15 states a legal conclusion, to which no response is required

16 16. That the creation and publication of the Ad constitutes an unauthorized
17 infringement upon Plaintiff's copyright.

18 **ANSWER:** Defendants deny each and every allegation of Paragraph 16.

19 17. That the Plaintiff has not issued or otherwise granted a license or other permission
20 to the Defendants or others to use his copyrighted work for any purpose.

21 **ANSWER:** Defendants lack knowledge or information sufficient to form a belief as to
22 the truth of the allegations of Paragraph 17 and affirmatively state that Plaintiff Dahl introduced
23 the facts described in the Book, as opposed to any protected expression of those facts, into the
24 public domain, impliedly licensing the use of those facts, and deny all contrary allegations of
25 Paragraph 17.

26 18. That Plaintiff is entitled to recover damages from the Defendants, and each of
27 them, in an amount equal to any profits of the Defendants attributable to the infringement
28 pursuant to 17 USC §504(b) or, statutory damages up to \$150,000.00 per Defendant in

1 accordance with 17 USC 504(c) in an amount to be determined at trial.

2 **ANSWER:** Defendants deny each and every allegation of Paragraph 18.

3 19. That it has been necessary for Plaintiff to retain the services of an attorney to
4 prosecute this action, and Defendants should be required to pay reasonable attorneys' fees and
5 costs of prosecuting same.

6 **ANSWER:** Defendants deny each and every allegation of Paragraph 19.

7 **IV. SECOND CLAIM FOR RELIEF**

8 **(Attorneys' Fees and Costs)**

9 20. Plaintiff hereby incorporates Paragraphs 1 through 19 of the Complaint as though
10 said paragraphs were fully set forth and incorporates the same herein by reference.

11 **ANSWER:** Defendants repeat and incorporate by reference all of its responses in the
12 above paragraphs as if fully set forth herein.

13 21. Defendants' conduct has made it necessary for Plaintiff to file the instant
14 action in defense of his copyrights in the Book.

15 **ANSWER:** Defendants deny each and every allegation of Paragraph 21.

16 22. Pursuant to 17 USC §505 Plaintiff is entitled to recover his reasonable costs and
17 attorneys' fees incurred in the prosecution of this action.

18 **ANSWER:** Defendants deny each and every allegation of Paragraph 22.

19 23. That it has been necessary for Plaintiff to retain the services of attorneys to
20 prosecute this action, and Defendants should be required to pay reasonable attorneys' fees and
21 costs of prosecuting same.

22 **ANSWER:** Defendants deny each and every allegation of Paragraph 23.

23 **AFFIRMATIVE DEFENSES**

24 1. Plaintiff's Complaint fails to state a claim on which relief can be granted.

25 2. Plaintiff's claims are barred by the doctrine of unclean hands.

26 3. Plaintiff's claims are barred, since they attempt to assert copyright protection over
27 non-copyrightable elements.
28

1 4. Defendants' work is an independent creation, and therefore does not infringe on
2 Plaintiff's copyright.

3 5. Defendants' work constitutes fair use, and therefore does not infringe on
4 Plaintiff's copyright.
5

6
7 Respectfully submitted,

8 Dated: April 6, 2015

By: /s/ Jacob A. Reynolds

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27 *Attorneys for Defendants*
28

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5 and LR 5-1, I certify that I am an employee of Hutchison & Steffen, LLC and that on the 6th day of April, 2015 the foregoing was served upon the parties via CM/ECF to the following parties:

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/s/ Bobbie Benitez

An employee of Hutchison & Steffen